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OSHA Inspections

U.S. Department of Labor
Occupational Safety and Health Administration

1989 (Revised)

OSHA 2098

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OSHA Inspections

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1989 (Revised)

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Introduction

Under the Occupational Safety and Health Act of 1970 (the Act), the Occupational Safety and Health Administration (OSHA) is authorized to conduct workplace inspections to determine whether employers are complying with standards issued by the Agency for safe and healthful workplaces. OSHA also enforces Section 5 (a)(1) of the Act, known as the General Duty Clause, which requires that every working man and woman must be provided with a safe and healthful workplace. Workplace inspections are performed by OSHA compliance safety and health officers who are knowledgeable and experienced in the occupational safety and health field and who are trained in the OSHA standards and in the recognition of safety and health hazards. Similarly, states with their own occupational safety and health programs conduct inspections using qualified State compliance safety and health officers.

Inspections are usually conducted without advance notice. In fact, alerting an employer without proper authorization in advance of an OSHA inspection can bring a fine of up to $1,000 and/or a 6-month jail term. This is true for Federal OSHA compliance officers as well as State inspectors.

There are, however, special circumstances under which OSHA may give notice to the employer, but such a notice will normally be less than 24 hours. These circumstances include the following:

- Imminent danger situations which require correction as soon as possible;
- Inspections that must take place after regular business hours or that require special preparation;
- Cases where notice is required to assure that the employer and employee representative or other personnel will be present;
- Cases where an inspection must be delayed for more than 5 working days when there is good cause; and

- Situations in which the OSHA area director determines that advance notice would produce a more thorough or effective inspection.

Employers who receive advance notice of an inspection must inform their employees' representative or arrange for OSHA to do so.

If an employer refuses to admit an OSHA compliance officer or if an employer attempts to interfere with the inspection, the Act permits appropriate legal action.

Based on a 1978 Supreme Court ruling (Marshall v. Barlow's Inc.), OSHA usually may not conduct warrantless inspections without valid consent. The Agency may, however, inspect after acquiring a judicially authorized search warrant based upon administrative probable cause or upon evidence of a violation.

The remainder of this booklet is divided into five parts: inspection priorities; preparing for the inspection; the inspection process; inspection results; and appeals process.

Inspection Priorities

Obviously, not all 5 million workplaces covered by the Act can be inspected immediately. The worst situations need attention first; therefore, OSHA has established a system of inspection priorities.

Imminent Danger

Imminent danger situations are given top priority. An imminent danger is any condition where there is reasonable certainty that a danger exists that can be expected to cause death or serious physical harm immediately or before the danger can be eliminated through normal enforcement procedures.

If an imminent danger situation is found, the compliance officer will ask the employer to voluntarily abate the hazard and to remove endangered employees from exposure.

Should the employer fail to do this, OSHA, through the regional solicitor, may apply to the Federal District Court for an injunction prohibiting further work as long as unsafe conditions exist.

Catastrophes and Fatal Accidents

Second priority is given to investigation of fatalities and accidents resulting in hospitalization of five or more employees.

Such catastrophes must be reported to OSHA by the employer within 48 hours. OSHA investigates to determine the cause of such accidents, whether existing OSHA standards were violated, and whether additional standards are necessary to help avoid a recurrence of similar accidents.

Employee Complaints

Third priority is given to formal employee complaints of alleged violations of standards or of unsafe or unhealthful working conditions.

The Act gives each employee the right to request an OSHA inspection when the employee believes he or she is in imminent danger from a hazard or when he or she thinks that there is a violation of an OSHA standard that threatens physical harm. OSHA will maintain confidentiality if requested, will inform the employee of any action it takes regarding the complaint and, if requested, will hold an informal review of any decision not to inspect.

Programmed Inspections

Next in priority are programmed inspections aimed at specific high hazard industries, occupations or health substances, or other industries identified in OSHA's current inspection procedures. Industries are selected for inspection on the basis of such factors as the injury incidence rates, previous citation history, employee exposure to toxic substances, or random selection. Special

emphasis programs may also be developed and may be regional or national in scope, depending on the distribution of the workplaces involved. Comprehensive safety inspections in manufacturing will be conducted normally in those establishments with lost-workday injury rates at or above the Bureau of Labor Statistics (BLS) national rate for manufacturing currently in use by OSHA. States with their own occupational safety and health programs may use somewhat different systems to identify industries for inspection.

Followup Inspections

A followup inspection determines if previously cited violations have been corrected. If an employer has failed to abate a violation, the compliance officer informs the employer that he or she is subject to "Failure to Abate" alleged violations and proposed additional daily penalties while such failure to abate or violation continues.

Records Review

A records review is an examination of the employer's injury and illness records to determine whether there will be a comprehensive inspection of the workplace. The compliance officer reviews the OSHA Form 200 (log of occupational injuries and illnesses) and employment data of the establishment. Using these data, the compliance officer calculates the lost-workday injury rate for the establishment. This figure is compared to the national average for manufacturing published by BLS. If the calculated lost-workday injury rate is below the BLS rate, the compliance officer will not normally conduct a comprehensive safety inspection. A brief tour of the facility will be conducted, however, to determine compliance with the Hazard Communication Standard and to ensure the presence of an effective safety and health management program. If the lost-workday injury rate is above the national average, an inspection will be conducted.

Preparing for the Inspection

A compliance officer represents the Agency and is expected

to demonstrate his or her knowledge and expertise in the safety and health field in a courteous and professional manner. Prior to the inspection, the compliance officer will become familiar with as many relevant facts as possible about the workplace, such as the inspection history of the establishment, the nature of the business, and the particular standards that might apply. This preparation provides the compliance officer with a knowledge of the potential hazards and industrial processes that may be encountered and aids in selecting appropriate personal protective equipment for use against these hazards during the inspection.

Inspector's Credentials

When the OSHA compliance officer arrives at the establishment, he or she displays official credentials and asks to meet an appropriate employer representative. Employers should always ask to see the compliance officer's credentials.

An OSHA Federal or State compliance officer carries official credentials that can be verified by calling the nearest Federal or State OSHA office. Compliance officers may not collect a penalty at the time of inspection or promote the sale of a product or service at any time; anyone who attempts to do so is bogus and the FBI or local law enforcement officials should be contacted immediately.

Opening Conference

In the opening conference, the compliance officer explains how the establishment was selected and determines whether it will be subject to a comprehensive safety inspection. The compliance officer also will ascertain whether an OSHA-funded consultation program is in progress or whether the facility is pursuing or has received an inspection exemption; if so, the inspection may be terminated.

The compliance officer explains the purpose of the visit, the scope of the inspection, and the standards that apply. The employer will be given a copy of applicable safety and

health standards as well as a copy of any employee complaint that may be involved (with the employee's name deleted, if the employee has requested anonymity).

The employer is asked to select an employer representative to accompany the compliance officer during the inspection.

An authorized employee representative also is given the opportunity to attend the opening conference and to accompany the compliance officer during the inspection. If the employees are represented by a recognized bargaining agent, the agent ordinarily will designate the employee representative to accompany the compliance officer. Similarly, if there is a plant safety committee, the employee members of that committee will designate the employee representative (in the absence of a recognized bargaining agent). Where neither employee group exists, the employee representative may be selected by the

employees themselves, or the compliance officer may determine if any employee suitably represents the interest of other employees. Under no circumstances may the employer select the employee representative for the walk-around.

The Act does not require that there be an employee representative for each inspection. Where there is no authorized employee representative, however, the compliance officer must consult with a reasonable number of employees concerning safety and health matters in the workplace.

The Inspection Process

After the opening conference, the compliance officer and accompanying representatives proceed through the establishment
to inspect work areas for safety or health hazards.

The route and duration of the inspection are determined by the compliance officer. While talking with employees, the compliance officer makes every effort to minimize any work

interruptions. The compliance officer observes safety and health conditions and practices; consults with employees privately, if necessary; takes photos and instrument readings; examines records, collects air samples, measures noise levels, surveys existing engineering controls; and monitors employee exposure to toxic fumes, gases and dusts.

Trade secrets observed by the compliance officer will be kept confidential. An inspector who releases confidential information without authorization is subject to a $1,000 fine and/or 1 year in jail. The employer may require that the employee representative have confidential clearance for any area in question.

Employees are consulted during the inspection tour. The compliance officer may stop and question workers, in private, about safety and health conditions and practices in their workplaces. Each employee is protected under the Act from discrimination for exercising his or her safety and health rights.

OSHA places special importance on posting and recordkeeping. The compliance officer will inspect records of deaths, injuries and illnesses which the employer is required to keep. He or she will check to see that a copy of the totals from the last page of OSHA Form No. 200 has been posted and that the OSHA workplace poster (OSHA 2203), which explains employees' safety and health rights, is prominently displayed. Where records of employee exposure to toxic substances and harmful physical agents have been required, they are also examined for compliance with the recordkeeping requirements.

The compliance officer also explains the requirements of the Hazard Communication Standard. Under that rule, employers must establish a written, comprehensive hazard communication program that includes provisions for container labeling, material safety data sheets, and an employee training program. The program must contain a list of the hazardous chemicals in each work area and the means the employer will use to inform employees of the hazards of non-routine tasks.

During the course of the inspection, the compliance officer will point out to the employer any unsafe or unhealthful working conditions observed. At the same time, the compliance officer will discuss possible corrective action if the employer so desires.

Some apparent violations detected by the compliance officer can be corrected immediately. When they are corrected on the spot, the compliance officer records such corrections to help in judging the employer's good faith in compliance. Even though corrected, the apparent violations still serve as the basis for a citation and, if appropriate, a notice of proposed penalty.

An inspection tour may cover part or all of an establishment, even if the inspection resulted from a specific complaint, fatality or catastrophe.

Closing Conference

After the inspection tour, a closing conference is held with the compliance officer, the employer, and the employee representative. It is a time for free discussion of problems and needs; a time for frank questions and answers.

The compliance officer also will give the employer a copy of "Employer Rights and Responsibilities Following an OSHA Inspection," and then briefly will discuss the information in the booklet and answer any questions.

The compliance officer discusses with the employer all unsafe or unhealthful conditions observed on the inspection and indicates all apparent violations for which a citation and a proposed penalty may be issued or recommended. The compliance officer will not indicate any specific proposed penalties. The employer is also informed of appeal rights.

During the closing conference, the employer may wish to produce records to show compliance efforts and to provide information that can help OSHA determine how much time may be needed to abate an alleged violation.

When appropriate, more than one closing conference may

be held. This is usually necessary when health hazards are being evaluated or when laboratory reports are required.

The compliance officer explains that OSHA area offices are full-service resource centers that inform the public of OSHA activities and programs, such as new or revised standards, including the status of proposed standards, comment periods, or public hearings; provide technical experts and materials, including courses offered at the OSHA Training Institute; refer callers to other agencies and professional organizations as appropriate; and promote effective safety and health programs through voluntary protection programs and expanded employer abatement assistance efforts.

If an employee representative does not participate in either the opening or the closing conference held with the employer, a separate discussion is held with the employee representative, if requested, to discuss matters of direct interest to employees.

Inspection Results

After the compliance officer reports findings, the area director determines if citations will be issued and if penalties will be proposed.

Citations

Citations inform the employer and employees of the regulations and standards alleged to have been violated and of the proposed length of time set for their abatement. The employer will receive citations and notices of proposed penalties by certified mail. The employer must post a copy of each citation at or near the place a violation occurred, for 3 days or until the violation is abated, whichever is longer.

Penalties

These are the types of violations that may be cited and the penalties that may be proposed:

- **Other Than Serious Violation** - A violation that

has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to $1,000 for each violation is discretionary. A penalty for an other than serious violation may be adjusted downward by as much as 80 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business. When the adjusted penalty amounts to less than $60, usually no penalty is proposed.

- **Serious Violation** - A violation where there is a substantial probability that death or serious physical harm could result. A mandatory penalty of up to $1,000 for each violation is proposed. A penalty for a serious violation may be adjusted downward based on the employer's good faith, history of previous violations, and size of business.

- **Willful Violation** - A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Act, and makes no reasonable effort to eliminate it. Penalties of up to $10,000 may be proposed for each willful violation.

  An employer who is convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an employee may be fined up to $250,000 (or $500,000 if the employer is a corporation) or imprisoned up to 6 months, or both. A second conviction doubles the possible term of imprisonment.

- **Repeated Violation** - A violation of any standard,

regulation, rule or order where, upon reinspection, a substantially similar violation is found and the original citation has become a final order. Repeated violations can bring a fine of up to $10,000 for each such violation.

- **Failure to Correct Prior Violation** - Failure to correct a prior violation may bring civil penalty of up to $1,000 for each day the violation continues beyond the presribed abatement date.

Additional violations for which citations and proposed penalties may be issued are as follows:

- Falsifying records, reports or applications can bring a fine of $10,000 or up to 6 months in jail, or both.

- Violations of posting requirements can bring a civil penalty of up to $1,000.

- Assaulting a compliance officer, or otherwise resisting, opposing, intimidating or interfering with a compliance officer in the performance of his or her duties is a criminal offense and is subject to a fine of not more than $5,000 and imprisonment for not more than 3 years.

Citations and penalty procedures may differ somewhat in states with their own occupational safety and health programs.

Appeals Process

Appeals by Employees

If an inspection was initiated because of an employee complaint, the employee or authorized employee representative may request an informal review of any decision not to issue a citation.

Employees may not contest citations, amendments to

citations, proposed penalties, or lack of penalties. They may, however, contest the time allowed for abatement of a hazardous condition. They also may contest an employer's "Petition for Modification of Abatement" (PMA) which requests an extension of the proposed abatement period. Employees must contest the PMA within 10 working days of its posting or within 10 working days after an authorized employee representative has received a copy.

Within 15 working days of the employer's receipt of a citation, the employer who wishes to contest must submit a written objection to OSHA. The OSHA area director forwards the objection to the Occupational Safety and Health Review Commission (OSHRC) which operates independently of OSHA.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty, or employer's notice of intention to contest.

Appeals by Employers

When issued a citation and notice of proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. The area director is authorized to enter into settlement agreements that revise citations and penalties to avoid prolonged legal disputes and that result in speedier hazard abatement (alleged violations contested before OSHRC do not need to be corrected until the contest is ruled upon by OSHRC).

Petition for Modification of Abatement

Upon receiving a citation, the employer must correct the cited hazard by the abatement date unless he or she contests the citation or abatement date. Factors beyond the employer's control, however, may prevent the completion of corrections by that date. In such a situation, the employer who has made a good faith effort to comply may file for a PMA date.

The written petition must specify the steps taken to achieve compliance, the additional time needed to comply, the reasons additional time is needed, and interim steps being taken to safeguard employees against the cited hazard during the intervening period. The employer must certify that a copy of the PMA was posted in a conspicuous place at or near each place where a violation occurred and that the employee representative received a copy of the petition.

Notice of Contest

If the employer decides to contest either the citation, the abatement period or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received to notify the OSHA area director in writing. Failure to do so will result in the citation and proposed penalty becoming a final order of the OSHRC without further appeal. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

Although there is no specific format for the Notice of Contest, it must clearly identify the employer's basis for filing--the citation, notice of proposed penalty, abatement period, or notification of failure to correct violations.

A copy of the Notice of Contest must be given to the employee's authorized representative. If any affected employees are not represented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace or given personally to each unrepresented employee.

Review Procedure

If the written Notice of Contest has been filed within the required 15 working days, the OSHA area director forwards the case to OSHRC. The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an administrative law judge.

A hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not require that they be represented by attorneys.

Once the administrative law judge has ruled, any party to the case may request a further review by OSHRC. Any of the three OSHRC commissioners also may, at his or her own motion, bring a case before the Commission for review. Commission rulings may be appealed to the appropriate U.S. Court of Appeals.

Appeals in State Plan States

States with their own occupational safety and health programs have a state system for review and appeal of citations, penalties and abatement periods. The procedures are generally similar to federal OSHA's, but cases are heard by a state review board or equivalent authority.

Additional Information

For further information and assistance, please contact your nearest OSHA office listed in this booklet.

Related Publications

A single free copy of the following materials can be obtained from OSHA field offices or the OSHA Publications Office, 200 Constitution Avenue, N. W., Room N-3101, Washington, D. C. 20210.

OSHA-2056 - All About OSHA

OSHA-3084 - Chemical Hazard Communication

OSHA-3047 - Consultation Services for the Employer

OSHA-3000 - Employer Rights Following an OSHA Inspection

OSHA-3111 - Hazard Communication Guidelines for Compliance

OSHA-3088 - How to Prepare for Workplace Emergencies

OSHA-3071 - Job Hazard Analysis

OSHA-3021 - OSHA: Employee Workplace Rights

OSHA-3077 - Personal Protective Equipment

OSHA-3079 - Respiratory Protection

BLS Publication 421-3--What Every Employer Needs to Know About OSHA Recordkeeping

OSHA-3104 - Hazard Communication - A Compliance Kit
(A reference guide to step-by-step requirements for compliance with the OSHA standard.)

(This kit is available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238. Request GPO Order No. 929-022-00000-9; $18 - domestic; $22.50 - foreign.)

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*These states and territories operate their own OSHA-approved job safety and health programs (Connecticut and New York plans cover public employees only). States with approved programs must have a standard that is identical to, or at least as effective, as the Federal standard.